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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HENRY BARNHILL

Plaintiff,

v.

CITY OF HEMET; OFFICER
BRETT MAYNARD; OFFICER
JOSHUA BISHOP; OFFICER
PEDRO AGUILA; CORPORAL
DOUGLAS KLINZING; JAMIE
GONZALEZ; CATHERINE
TIPTON; and DOES 1-10, inclusive,

Defendants.

CASE No.: 5:23-cv-00589

**PLAINTIFF'S COMPLAINT FOR
DAMAGES**

1. 42 U.S.C. § 1983 (Unreasonable Search and Seizure – Excessive Force)
2. 42 U.S.C. § 1983 (Municipal Liability – Unconstitutional Custom, Practice, or Policy)
3. 42 U.S.C. § 1983 (Municipal Liability – Failure to Train)
4. 42 U.S.C. § 1983 (Municipal Liability – Ratification)
5. Battery
6. Negligence
7. Violation of Cal. Civil Code § 52.1

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR DAMAGES**

2 COMES NOW, Plaintiff HENRY BARNHILL for his Complaint against
3 CITY OF HEMET, OFFICER BRETT MAYNARD; OFFICER JOSHUA
4 BISHOP; OFFICER PEDRO AGUILA; CORPORAL DOUGLAS KLINZING;
5 JAMIE GONZALEZ; CATHERINE TIPTON; and DOES 1-10, inclusive and
6 hereby alleges as follows:

7
8 **INTRODUCTION**

9 1. This civil rights action seeks compensatory and punitive damages
10 from Defendants for violating various rights under the United States
11 Constitution and California law in connection with the use of excessive and
12 unreasonable force against PLAINTIFF on April 29, 2022.

13 2. Defendant OFFICER BRETT MAYNARD caused PLAINTIFF'S
14 injuries when he tackled PLAINTIFF, shoved his face forcefully into a brick
15 wall, threw him violently to the ground, kned him in his face, and participated
16 in a group beating that left PLAINTIFF with, among other things, a blowout
17 fracture to his orbital floor, an ear avulsion, and a large parieto-occipital
18 hematoma.

19 3. Defendant OFFICER JOSHUA BISHOP caused PLAINTIFF'S
20 injuries when he deployed a taser multiple times on PLAINTIFF and
21 participated in a group beating that left PLAINTIFF with, among other things,
22 a blowout fracture to his orbital floor, an ear avulsion, and a large parieto-
23 occipital hematoma.

24 4. Defendant OFFICER PEDRO AGUILA caused PLAINTIFF'S
25 injuries when he participated in a group beating that left PLAINTIFF with,
26 among other things, a blowout fracture to his orbital floor, an ear avulsion,
27 and a large parieto-occipital hematoma.

1 5. Defendant CORPORAL DOUGLAS KLINZING caused
2 PLAINTIFF'S injuries when he participated in a group beating that left
3 PLAINTIFF with, among other things, a blowout fracture to his orbital floor,
4 an ear avulsion, and a large parieto-occipital hematoma.

5 6. DOES 1-6, inclusive, ("DOE OFFICERS") caused various injuries
6 herein by integrally participating or failing to intervene in the incident, and by
7 engaging in other acts and/or omissions around the time of the incident.

8 7. Defendants CITY OF HEMET ("CITY") and DOES 7-10,
9 inclusive, also caused various injuries and are liable under federal law and
10 under the principles set forth in *Monell v. Department of Social Services*, 436
11 U.S. 658 (1978).

12 8. This action is in the public interest as PLAINTIFF seeks by means
13 of this civil rights action to hold accountable those responsible for the serious
14 bodily injury inflicted by DEFENDANTS, including OFFICER BRETT
15 MAYNARD, OFFICER JOSHUA BISHOP, OFFICER PEDRO AGUILA;
16 CORPORAL DOUGLAS KLINZING, JAMIE GONZALEZ, CATHERINE
17 TIPTON, and CITY OF HEMET'S ratification, failure to train, and policy of
18 inaction in the face of serious constitutional violations, as well as the unlawful
19 custom and practice with respect to the use force.

20 9. PLAINTIFF suffered serious bodily injury as a direct and
21 proximate result of the actions and inactions of DEFENDANTS CITY,
22 MAYNARD, BISHOP, AGUILA, KLINZING, GONZALEZ, TIPTON, and
23 DOES 1-10, inclusive. DEFENDANTS CITY, MAYNARD, BISHOP,
24 AGUILA, KLINZING, GONZALEZ, TIPTON, and DOES 1-10, inclusive, are
25 directly liable for PLAINTIFF'S injuries under federal law pursuant to 42
26 U.S.C. § 1983. DEFENDANT CITY is also vicariously liable for the acts and
27 omissions of DEFENDANTS MAYNARD, BISHOP, AGUILA, KLINZING,
28

1 GONZALEZ, TIPTON, and DOES 1-10, inclusive, pursuant to Cal. Govt.
2 Code §§ 820 and 815(a).

3
4 **THE PARTIES**

5 10. At all relevant times, PLAINTIFF was an individual residing in
6 Riverside County, California.

7 11. Defendant CITY OF HEMET (“CITY”) is a political subdivision
8 of the State of California that is within this judicial district. CITY is
9 responsible for the actions, omissions, policies, procedures, practices, and
10 customs of its various agents and agencies, including the Hemet Police
11 Department and its agents and employees. At all relevant times, Defendant
12 CITY was responsible for assuring that actions, omissions, policies,
13 procedures, practices, and customs of the Hemet Police Department and its
14 employees and agents complied with the laws of the United States and the
15 State of California. At all relevant times, CITY was the employer of
16 Defendants MAYNARD, BISHOP, AGUILA, KLINZING, GONZALEZ,
17 TIPTON, and DOES 1-10.

18 12. Defendant BRETT MAYNARD (“MAYNARD”) is a police
19 officer working for the Hemet Police Department. At all relevant times,
20 MAYNARD was acting under color of law within the course and scope of his
21 duties as an officer working for the Hemet Police Department. At all relevant
22 times, MAYNARD was acting with the complete authority and ratification of
23 his principal, CITY OF HEMET.

24 13. Defendant OFFICER BISHOP (“BISHOP”) is a police officer
25 working for the Hemet Police Department. At all relevant times, BISHOP was
26 acting under color of law within the course and scope of his duties as an officer
27 working for the Hemet Police Department. At all relevant times, BISHOP was
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1 acting with the complete authority and ratification of his principal, CITY OF
2 HEMET.

3 14. Defendant OFFICER AGUILA (“AGUILA”) is a police officer
4 working for the Hemet Police Department. At all relevant times, AGUILA
5 was acting under color of law within the course and scope of his duties as an
6 officer working for the Hemet Police Department. At all relevant times,
7 AGUILA was acting with the complete authority and ratification of his
8 principal, CITY OF HEMET.

9 15. Defendant CORPORAL KLINZING (“KLINZING”) is a police
10 officer working for the Hemet Police Department. At all relevant times,
11 KLINZING was acting under color of law within the course and scope of his
12 duties as an officer working for the Hemet Police Department. At all relevant
13 times, KLINZING was acting with the complete authority and ratification of
14 his principal, CITY OF HEMET.

15 16. Defendant GONZALEZ (“GONZALEZ”) is a supervising officer
16 working for the Hemet Police Department. At all relevant times, GONZALEZ
17 was acting under color of law within the course and scope of their duties as an
18 officer working for the Hemet Police Department. At all relevant times,
19 GONZALEZ was acting with the complete authority and ratification of his
20 principal, CITY OF HEMET.

21 17. Defendant TIPTON (“TIPTON”) is a supervising officer working
22 for the Hemet Police Department. At all relevant times, TIPTON was acting
23 under color of law within the course and scope of her duties as an officer
24 working for the Hemet Police Department. At all relevant times, TIPTON was
25 acting with the complete authority and ratification of his principal, CITY OF
26 HEMET.

1 18. Defendants DOES 1-6, inclusive, are officers for the Hemet Police
2 Department (“DOE Officers”). At all relevant times, these Defendants were
3 acting under color of law within the course and scope of their duties as Hemet
4 Police Department officers and at other times they were working in their
5 personal capacity as individuals outside the scope of their employment. At all
6 relevant times, DOE Officers were acting with the complete authority and
7 ratification of their principal, CITY.

8 19. Defendants DOES 7-10, inclusive, are managerial, supervisory, or
9 policymaking employees of the Hemet Police Department who were acting
10 under color of law within the course and scope of their duties as supervisory
11 officers for the Hemet Police Department (“DOE Supervisors”). DOE
12 Supervisors were acting with the complete authority of their principal, CITY.

13 20. PLAINTIFF is ignorant of the true names and capacities of
14 Defendants DOES 1-10, inclusive, and therefore sues these defendants by such
15 fictitious names. PLAINTIFF will amend the complaint to allege the true
16 names and capacities of those defendants when the same has been ascertained.
17 PLAINTIFF is informed, believes, and on that basis alleges, that DOES 1-10,
18 inclusive, and each of them, are responsible in some manner for the
19 occurrences alleged herein and proximately caused PLAINTIFF’S damages.

20 21. On information and belief, DOES 1-10, inclusive, were at all
21 relevant times residents of the County of Riverside.

22 22. PLAINTIFF is informed and believes, and on that basis alleges,
23 that Defendants acted at all times mentioned herein as the actual and/or
24 ostensible agents, employees, servants or representatives of each other and, in
25 doing the activities alleged herein, acted within the scope of their authority as
26 agents and employees, and with the permission and consent of each other.

1 23. PLAINTIFF is informed and believes, and on that basis alleges,
2 that at all times mentioned herein all Defendants acted under color of law,
3 statute, ordinance, regulations, customs and usages of the State of California
4 and CITY.

5 24. All Defendants who are natural persons, including DOES 1-10,
6 inclusive, are sued individually and/or in his/her capacity as officers, deputies,
7 investigators, sergeants, captains, commanders, supervisors, and/ or civilian
8 employees, agents, policy makers, and representatives of the Hemet Police
9 Department.

10 25. DEFENDANT CITY is liable for the nonfeasance and
11 malfeasance of Defendants MAYNARD, BISHOP, AGUILA, KLINZING,
12 GONZALEZ, TIPTON, and DOES 1-10, inclusive, for the state law claims
13 herein pursuant to Cal. Govt. Code §§ 815.2(a), 815.6. Further, Defendants
14 MAYNARD, BISHOP, AGUILA, KLINZING, GONZALEZ, TIPTON, and
15 DOES 1-10, inclusive, are liable for their nonfeasance and malfeasance
16 pursuant to Cal. Govt. Code § 820(a).

17 26. PLAINTIFF suffered serious bodily injury as a direct and
18 proximate result of the actions of Defendants MAYNARD, BISHOP,
19 AGUILA, KLINZING, GONZALEZ, TIPTON, and DOES 1-10 inclusive.
20 Defendants MAYNARD, BISHOP, AGUILA, KLINZING, GONZALEZ,
21 TIPTON, and DOES 1-10 are directly liable for PLAINTIFF'S injuries under
22 federal law pursuant to 42 U.S.C. § 1983.

23 27. On October 5, 2022, PLAINTIFF timely filed a claim for damages
24 with the CITY pursuant to applicable sections of the California Government
25 Code.

26 28. On October 10, 2022, the CITY denied PLAINTIFF'S claim
27 through its agent Carl Warren & Company.
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2 **JURISDICTION AND VENUE**

3 29. The Court has jurisdiction over PLAINTIFF'S claims pursuant to
4 28 U.S.C. §§ 1331 and 1343(a)(3)-(4) because PLAINTIFF asserts claims
5 arising under the laws of the United States including 42 U.S.C. § 1983 and the
6 Fourth Amendment of the United States Constitution. The Court has
7 jurisdiction over PLAINTIFF's state law claims pursuant to 28 U.S.C. § 1367.

8 30. Venue in this judicial district is proper pursuant to 28 U.S.C.
9 § 1391(b), because all incidents, events, and occurrences giving rise to this
10 action occurred within this district.

11

12 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

13 31. PLAINTIFF repeats and re-alleges each and every allegation of
14 paragraphs 1 through 30, inclusive, as if fully set forth herein.

15 32. PLAINTIFF sustained injuries, including but not limited to pain
16 and suffering when Defendants MAYNARD, BISHOP, AGUILA,
17 KLINZING, and DOES 1-6 used excessive and unreasonable force against him
18 and employed negligent tactics, including when they tackled him, beat him,
19 and tased him, and are responsible for his severe injuries.

20 33. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
21 DOES 1-6 pursued PLAINTIFF on foot as he exited his vehicle after a brief
22 car chase.

23 34. The foot pursuit ended when PLAINTIFF ran to the front door of
24 his own residence and tried to unlock the front door.

25 35. As he attempted to unlock the front door, PLAINTIFF'S hands
26 were visible and empty. PLAINTIFF had no weapons of any kind in his hands
27 or within his reach. When the pursuit ended, PLAINTIFF made no efforts to
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1 escape from the officers and was not being assaultive to the officers. During
2 his arrest, PLAINTIFF repeatedly exclaimed that he was in fact not resisting
3 arrest. PLAINTIFF did not present a danger to the officers or anyone else
4 throughout the encounter.

5 36. While PLAINTIFF was not a threat to the officers or any other
6 person, was unarmed, had stopped his flight from apprehension, and was not
7 attempting to resist detention, DEFENDANT MAYNARD violently tackled
8 PLAINTIFF, slamming PLAINTIFF'S head and face into a brick wall.
9 DEFENDANT MAYNARD then violently threw PLAINTIFF to the ground.
10 At the time DEFENDANT MAYNARD tackled PLAINTIFF and threw him to
11 the ground, PLAINTIFF presented no threat to the officers or anyone else. In
12 fact, by the time DEFENDANT MAYNARD slammed PLAINTIFF to the
13 ground, DEFENDANTS MAYNARD and DEFENDANT AGUILA had
14 control of both of PLAINTIFFS arms. DEFENDANT MAYNARD'S actions
15 caused PLAINTIFF to endure serious pain and suffering.

16 37. PLAINTIFF lay in extreme pain on the ground when officer
17 MAYNARD kned a defenseless PLAINTIFF in the face.

18 38. While PLAINTIFF's hands were visible and empty, and while he
19 was not resisting and in fact was screaming that he was not resisting, BISHOP
20 deployed his taser on PLAINTIFF at least two times. BISHOP then used his
21 taser as an improvised weapon and struck PLAINTIFF violently and with full
22 force in the head with the taser.

23 39. As PLAINTIFF lay on the ground after having bean tackled,
24 beaten, and tased, AGUILA and KLINZING joined the group beating and
25 caused further pain and suffering to PLAINTIFF. PLAINTIFF'S hands were
26 visible, he was not resisting, and he made no effort to escape. PLAINTIFF in
27 fact was yelling throughout the encounter that he was nor resisting arrest.
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40. No weapons of any kind were found on PLAINTIFF or within PLAINTIFF'S reach.

41. Even though PLAINTIFF was not resisting, PLAINTIFF had the right to resist excessive force.

42. PLAINTIFF was subjected to unreasonable and excessive force, inflicted when he was tackled face first into a wall, kneed in the face, shot with a taser multiple times, had his face slammed into the ground while already subdued, struck in the head with the taser as an improvised weapon, and subjected to a group beating.

43. As a result of the excessive and unreasonable force, PLAINTIFF suffered serious bodily injury including a blowout fracture to his orbital floor, an ear avulsion, and a large parieto-occipital hematoma. PLAINTIFF'S injuries required emergency surgical intervention. PLAINTIFF continues to suffer pain to this day.

44. The use of force was excessive and objectively unreasonable under the circumstances, especially because PLAINTIFF did not pose an immediate threat to anyone.

45. PLAINTIFF seeks damages for his past and future pain and suffering including impairment, disfigurement, emotional distress related to his injuries, mental anguish, embarrassment, loss of quality of life, and any medical expenses under these claims. PLAINTIFF also seeks reasonable attorneys' fees and costs.

FIRST CLAIM FOR RELIEF

Unreasonable Search and Seizure – Excessive Force (42 U.S.C. § 1983)

(By PLAINTIFF against Defendants MAYNARD, BISHOP, AGUILA,
KLINZING, and DOES 1-6, inclusive)

1 46. PLAINTIFF repeats and re-alleges each and every allegation of
2 paragraphs 1 through 45, inclusive, as if fully set forth herein.

3 47. The Fourth Amendment of the United States Constitution, as
4 applied to State Actors by the Fourteenth Amendment, provides the right of
5 every person to be free from the use of excessive force by police officers.

6 48. When Defendants MAYNARD, BISHOP, AGUILA, KLINZING,
7 and DOES 1-6, inclusive, pursued PLAINTIFF on foot, violently tackled and
8 threw PLAINTIFF to the ground, tased PLAINTIFF, and beat PLAINTIFF,
9 PLAINTIFF had not and did not threaten any person, either physically or
10 verbally, including DEFENDANTS.

11 49. Throughout the incident, PLAINTIFF presented no immediate
12 threat to the safety of the officers or others, there were reasonable less
13 intrusive options available to DEFENDANTS, and PLAINTIFF was not
14 attempting to evade detention or arrest, was not resisting the detention or
15 arrest, was not assaultive, and never attempted to punch or kick any officer or
16 any others. Thus, Defendants MAYNARD, BISHOP, AGUILA, KLINZING,
17 and DOES 1-6 used excessive and unreasonable force, including deadly force,
18 against PLAINTIFF when they tackled PLAINTIFF face first into a brick wall,
19 tased PLAINTIFF, violently struck PLAINTIFF in the head using a taser as
20 an improvised weapon, beat PLAINTIFF, and caused him serious bodily
21 injury.

22 50. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
23 DOES 1-6 caused various injuries herein by integrally participating or failing
24 to intervene in the incident, and by engaging in other acts and/or omissions
25 around the time of the incident. DEFENDANTS' acts and omissions deprived
26 PLAINTIFF of his right to be secure in his person against unreasonable
27 searches and seizures as guaranteed to PLAINTIFF under the Fourth
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1 Amendment to the United States Constitution and applied to State Actors by
2 the Fourteenth Amendment.

3 51. As a direct result of the aforesaid acts and omissions of
4 Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and DOES 1-6,
5 PLAINTIFF suffered great physical and mental injury, fear and emotional
6 distress related to his physical injuries, and loss of his earning capacity in an
7 amount according to proof.

8 52. The conduct of Defendants MAYNARD, BISHOP, AGUILA,
9 KLINZING, and DOES 1-6 alleged above was willful, wanton, malicious, and
10 done with reckless disregard for the rights and safety of PLAINTIFF and
11 warrants the imposition of exemplary and punitive damages in an amount
12 according to proof.

13 53. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
14 DOES 1-6 were acting under color of state law and within the course and scope
15 of their employment as officers for the CITY OF HEMET.

16 54. PLAINTIFF seeks damages for his past and future pain and
17 suffering, loss of enjoyment of life, medical expenses, and loss of earning
18 capacity under this claim.

19 55. PLAINTIFF also seeks attorneys' fees and costs under this claim.

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21 **SECOND CLAIM FOR RELIEF**

22 **Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C.**
23 **§ 1983)**

24 (By PLAINTIFF against CITY OF HEMET; GONZALEZ; TIPTON; and DOES
25 7-10, inclusive)

26 56. PLAINTIFF repeats and re-alleges each and every allegation of
27 paragraphs 1 through 55, inclusive, as if fully set forth herein.
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1 57. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
2 DOES 1-6, inclusive, acted under color of state law.

3 58. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
4 DOES 1-6, inclusive, acted pursuant to an expressly adopted fiscal policy or
5 longstanding practice or custom of the DEFENDANT CITY OF HEMET, and
6 DOES 7-10, inclusive.

7 59. On information and belief, Defendants MAYNARD, BISHOP,
8 AGUILA, KLINZING, and DOES 1-6, inclusive, were not disciplined,
9 reprimanded, retrained, suspended, or otherwise penalized in connection with
10 deprivation of PLAINTIFF'S rights.

11 60. DEFENDANTS CITY OF HEMET, and DOES 7-10, inclusive,
12 together with other CITY policymakers and supervisors, maintained, inter alia,
13 the following unconstitutional customs, practices, and policies:

14 (a) Using excessive and unreasonable force, including deadly
15 force on unarmed persons who do not pose an immediate risk of death
16 or serious bodily injury to others;

17 (b) Providing inadequate training regarding the use of force;

18 (c) Providing inadequate training regarding de-escalation;

19 (d) Employing and retaining as police officers, individuals such
20 as Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
21 DOES 1-6 and DOES 1-6, inclusive, who DEFENDANTS CITY OF
22 HEMET, GONZALEZ, TIPTON, and DOES 7-10, inclusive, at all times
23 material herein, knew or reasonably should have known had dangerous
24 propensities for abusing their authority and for using excessive force;

25 (e) Inadequately supervising, training, controlling, assigning,
26 and disciplining CITY officers, and other personnel, including
27 Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and DOES
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1 1-6, inclusive, who CITY OF HEMET knew or in the exercise of
2 reasonable care should have known, had the aforementioned
3 propensities or character traits;

4 (f) Maintaining grossly inadequate procedures for reporting,
5 supervising, investigating, reviewing, disciplining, and controlling
6 misconduct by officers of the CITY OF HEMET;

7 (g) Failing to adequately discipline CITY OF HEMET officers
8 for the above-mentioned categories of misconduct, including inadequate
9 discipline and “slaps on the wrist,” discipline that is so slight as to be
10 out of proportion with the magnitude of the misconduct, and other
11 inadequate discipline that is tantamount to encouraging misconduct;

12 (h) Encouraging, accommodating, or facilitating a “blue code
13 of silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,” or
14 simply “code of silence,” pursuant to which officers do not report other
15 officers’ errors, misconduct, or crimes. Pursuant to this code of silence,
16 if questioned about an incident of misconduct involving another officer,
17 while following the code, the officer being questioned will claim
18 ignorance of the other officer’s wrongdoing.

19 61. By reason of the aforementioned acts and omissions, PLAINTIFF
20 has endured substantial pain and suffering.

21 62. DEFENDANTS CITY OF HEMET, GONZALEZ, TIPTON, and
22 DOES 7-10, inclusive, together with various other officials, whether named or
23 unnamed, had either actual or constructive knowledge of the deficient policies,
24 practices and customs alleged herein. Despite having knowledge as stated
25 above, these DEFENDANTS condoned, tolerated and through actions and
26 inactions thereby ratified such policies. Said DEFENDANTS also acted with
27 deliberate indifference to the foreseeable effects and consequences of these
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1 policies with respect to the constitutional rights of PLAINTIFF and other
2 individuals similarly situated.

3 63. By perpetrating, sanctioning, tolerating, and ratifying the
4 outrageous conduct and other wrongful acts, DEFENDANTS CITY OF
5 HEMET, GONZALEZ, TIPTON, and DOES 7-10, inclusive, acted with
6 intentional, reckless, and callous disregard for the PLAINTIFF'S
7 Constitutional rights. Furthermore, the policies, practices, and customs
8 implemented, maintained, and tolerated by DEFENDANTS CITY OF
9 HEMET, GONZALEZ, TIPTON, and DOES 7-10, inclusive, were
10 affirmatively linked to and were a significantly influential force behind
11 PLAINTIFF'S injuries.

12 64. The acts of each of DEFENDANTS DOES 7-10, inclusive, were
13 willful, wanton, oppressive, malicious, fraudulent, and extremely offensive
14 and unconscionable to any person of normal sensibilities, and therefore
15 warrants imposition of exemplary and punitive damages as to DOES 7-10,
16 inclusive.

17 65. Based on information and belief, the following are only a few
18 examples of cases evidencing Defendant CITY'S unconstitutional policies,
19 where the involved officers were not disciplined, reprimanded, retrained,
20 suspended, or otherwise penalized in connection with the underlying acts
21 giving rise to the below lawsuits, which indicates that the CITY OF HEMET
22 routinely ratifies such behavior and maintains a practice of allowing such
23 behavior:

24 (a) In *Acosta. v. City of Hemet, et al.*, case number 5:19-CV-
25 00779-CJC, Defendant CITY settled with an unarmed man who was shot in
26 the back by CITY officers;

1 (b) In *Erickson v. City of Hemet, et al.*, case number 5:19-CV-
2 00779-CJC, Defendant CITY settled with a man who was attacked by a K-
3 9;

4 (c) In *Mendoza v. City of Hemet, et al.*, case number 5:21-cv-
5 01134-JGB-SHK, Defendant CITY settled with an unarmed woman who
6 was shot in the back with kinetic rounds requiring emergency surgery.

7 66. By reason of the aforementioned acts and omissions of
8 DEFENDANTS CITY OF HEMET, GONZALEZ, TIPTON, and DOES 7-10,
9 inclusive, PLAINTIFF suffered past and future pain and suffering, loss of
10 enjoyment of life, medical expenses, and loss of earning capacity.

11 67. Accordingly, DEFENDANTS CITY OF HEMET and DOES 7-10,
12 inclusive, each are liable for compensatory damages under 42 U.S.C. § 1983.

13 68. PLAINTIFF also seeks attorneys' fees and costs under this claim.
14

15 **THIRD CLAIM FOR RELIEF**

16 **Municipal Liability for Failure to Train (42 U.S.C. §1983)**

17 (By PLAINTIFF against CITY; GONZALEZ, TIPTON; and DOES 7-10,
18 inclusive)

19 69. PLAINTIFF repeats and re-alleges each and every allegation in
20 paragraphs 1 through 68 of this Complaint with the same force and effect as
21 if fully set forth herein.

22 70. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
23 DOES 1-6, inclusive, acted under color of law.

24 71. The acts of Defendants MAYNARD, BISHOP, AGUILA,
25 KLINZING, and DOES 1-6, inclusive, deprived PLAINTIFF of his particular
26 rights under the United States Constitution.
27
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1 72. On information and belief, CITY OF HEMET failed to properly
2 and adequately train Defendants MAYNARD, BISHOP, AGUILA,
3 KLINZING, and DOES 1-6, inclusive, including but not limited to, with
4 regard to the use of physical force, detention of an automobile, detention of a
5 person, and arrest of a person.

6 73. The training policies of DEFENDANT CITY OF HEMET were
7 not adequate to train its officers to handle the usual and recurring situations
8 with which they must deal, including de-escalation techniques, and the use of
9 less than lethal and lethal force.

10 74. Moreover, the training policies of DEFENDANT CITY OF
11 HEMET were not adequate to train its officers to handle the usual and
12 recurring situations with which they must deal, including ensuring traffic stops
13 and detentions are legal and use of force is reasonable and not excessive.

14 75. DEFENDANT CITY OF HEMET and DOES 7-10, inclusive, were
15 deliberately indifferent to the obvious consequences of its failure to train its
16 officers adequately.

17 76. The failure of DEFENDANT CITY OF HEMET and DOES 7-10,
18 inclusive, to provide adequate training caused the deprivation of
19 PLAINTIFF'S rights by Defendants MAYNARD, BISHOP, AGUILA,
20 KLINZING, and DOES 1-6, inclusive; that is, DEFENDANTS' failure to train
21 is so closely related to the deprivation of PLAINTIFF'S rights as to be the
22 moving force that caused the ultimate injury.

23 77. The following are only a few examples of cases where the
24 involved officers were not disciplined, reprimanded, retrained, suspended, or
25 otherwise penalized in connection with the underlying acts giving rise to the
26 below lawsuits, which indicates that the CITY OF HEMET failed to
27 adequately train its officers with regard to the use of force:
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(a) In *Acosta v. City of Hemet, et al.*, case number 5:19-CV-00779-CJC, Defendant CITY settled with an unarmed man who was shot in the back by CITY officers;

(b) In *Erickson v. City of Hemet, et al.*, case number 5:19-CV-00779-CJC, Defendant CITY settled with a man who was attacked by a K-9;

(c) In *Mendoza v. City of Hemet, et al.*, case number 5:21-cv-01134-JGB-SHK, Defendant CITY settled with an unarmed woman who was shot in the back with kinetic rounds requiring emergency surgery.

78. By reason of the aforementioned acts and omissions, PLAINTIFF has suffered past and future pain and suffering, loss of enjoyment of life, medical expenses, and loss of earning capacity.

79. Accordingly, DEFENDANT CITY OF HEMET and DOES 7-10, inclusive, are liable to PLAINTIFF for compensatory damages under 42 U.S.C. § 1983.

80. PLAINTIFF also seeks attorneys' fees and costs of suit.

FOURTH CLAIM FOR RELIEF

Municipal Liability – Ratification (42 U.S.C. § 1983)

(By PLAINTIFF against CITY; GONZALEZ; TIPTON; and DOES 7-10, inclusive)

81. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs 1 through 80 of this Complaint with the same force and effect as if fully set forth herein.

82. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and DOES 1-6, inclusive, acted under color of law.

1 83. The acts of Defendants MAYNARD, BISHOP, AGUILA,
2 KLINZING, and DOES 1-6, inclusive, deprived PLAINTIFF of his particular
3 rights under the United States Constitution.

4 84. Upon information and belief, a final policymaker, acting under
5 color of law, has a history of ratifying unreasonable uses of force, including
6 deadly force.

7 85. Upon information and belief, a final policymaker, acting under
8 color of law, who had final policymaking authority concerning the acts of
9 Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and DOES 1-6's,
10 acts and the bases for them, ratified DEFENDANTS' actions. Upon
11 information and belief, the final policymaker knew of and specifically
12 approved of Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
13 DOES 1-6's, acts.

14 86. On information and belief, CITY OF HEMET'S final
15 policymakers, including DEFENDANTS GONZALEZ, TIPTON, and DOES
16 7-10, inclusive, knew that PLAINTIFF never presented a risk of harm to an
17 officer or anyone else and that PLAINTIFF was always unarmed during the
18 incident and complied with officers' commands.

19 87. On information and belief, the official policies with respect to the
20 incident are that officers are not to use force against an individual unless the
21 individual poses an immediate risk of bodily injury to the officers or others.
22 The officers' actions deviated from these official policies because PLAINTIFF
23 did not pose an immediate threat of death or serious bodily injury to the
24 involved officers or anyone.

25 88. On information and belief, the CITY OF HEMET approved of the
26 officers' actions after a hearing presented by the officers' legal counsel to
27 DOES 7-10, inclusive, after which DOES 7-10, inclusive, found the officers'
28

1 actions to be within the official policies of the Hemet Police Department. On
2 information and belief, the basis for such approval was based on the officers'
3 self-serving statements that they feared PLAINTIFF presented a threat of harm
4 to themselves or others, despite the plethora of evidence to the contrary,
5 including evidence that PLAINTIFF was unarmed, submitted to the officers'
6 commands when he heard them, and never presented a risk of harm to the
7 officers or anyone else.

8 89. Upon information and belief, a final policymaker has determined
9 that the acts of Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
10 DOES 1-6 were "within policy."

11 90. The following are only a few examples of cases where the
12 involved officers were not disciplined, reprimanded, retrained, suspended, or
13 otherwise penalized in connection with the underlying acts giving rise to the
14 below lawsuits, which indicates that the CITY OF HEMET routinely ratifies
15 such behavior:

16 (a) In *Acosta v. City of Hemet, et al.*, case number 5:19-CV-
17 00779-CJC, Defendant CITY settled with an unarmed man who was
18 shot in the back by CITY officers;

19 (b) In *Erickson v. City of Hemet, et al.*, case number 5:19-CV-
20 00779-CJC, Defendant CITY settled with a man who was attacked
21 by a K-9;

22 (c) In *Mendoza v. City of Hemet, et al.*, case number 5:21-cv-
23 01134-JGB-SHK, Defendant CITY settled with an unarmed woman
24 who was shot in the back with kinetic rounds requiring emergency
25 surgery.

1 91. By reason of the aforementioned acts and omissions, PLAINTIFF
2 has and will suffer past and future pain and suffering, loss of enjoyment of
3 life, medical expenses, and loss of earning capacity.

4 92. Accordingly, DEFENDANTS CITY OF HEMET and DOES 7-10,
5 inclusive, are liable to PLAINTIFF for compensatory damages under 42
6 U.S.C. § 1983.

7 93. PLAINTIFF also seeks attorneys' fees and costs of suit.
8

9 **FIFTH CLAIM FOR RELIEF**

10 **Battery (Cal. Govt. Code § 820 and California Common Law)**

11 (BY PLAINTIFF against all DEFENDANTS)

12 94. PLAINTIFF repeats and re-alleges each and every allegation of
13 paragraphs 1 through 93, inclusive, as if fully set forth herein.

14 95. Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and
15 DOES 1-6, inclusive, while working as officers, sergeants, and in other
16 capacities, for the Hemet Police Department, and acting within the course and
17 scope of their duties, tackled PLAINTIFF, violently threw him to the ground,
18 tased PLAINTIFF, struck PLAINTIFF in the head with a taser used as an
19 improvised weapon, and brutally beat PLAINTIFF. As a result of the actions
20 of Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and DOES 1-6,
21 inclusive, PLAINTIFF was seriously injured. Defendants MAYNARD,
22 BISHOP, AGUILA, KLINZING, and DOES 1-6, inclusive, had no legal
23 justification for using force against PLAINTIFF, Defendants MAYNARD,
24 BISHOP, AGUILA, KLINZING, and DOES 1-6's use of force while carrying
25 out their duties as officers was unreasonable under the circumstances.

26 96. At all relevant times, PLAINTIFF was not an immediate threat of
27 bodily injury to anyone, including DEFENDANTS.
28

1 97. DEFENDANTS CITY, GONZALEZ, TIPTON, and DOES 7-10,
 2 inclusive, are directly liable and responsible for the acts of Defendants
 3 MAYNARD, BISHOP, AGUILA, KLINZING, and DOES 1-6, inclusive,
 4 because DEFENDANTS CITY, GONZALEZ, TIPTON, and DOES 7-10,
 5 inclusive, failed to adequately train, discipline, supervise, or in any other way
 6 control Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and DOES
 7 1-6, inclusive, in the exercise of their unlawful use of excessive and
 8 unreasonable force.

9 98. DEFENDANT CITY is vicariously liable for the wrongful acts of
 10 Defendants MAYNARD, BISHOP, AGUILA, KLINZING, and DOES 1-6,
 11 inclusive, pursuant to section 815.2(a) of the California Government Code,
 12 which provides that a public entity is liable for injuries caused by its
 13 employees within the scope of the employment if the employees' acts would
 14 subject them to liability.

15 99. The conduct of Defendants MAYNARD, BISHOP, AGUILA,
 16 KLINZING, and DOES 1-6, inclusive, was malicious, wanton, oppressive, and
 17 accomplished with a conscious disregard for the rights of PLAINTIFF,
 18 entitling PLAINTIFF to an award of exemplary and punitive damages.

19 100. PLAINTIFF is claiming past and future medical expenses
 20 pursuant to this claim and damages for loss of earning capacity. PLAINTIFF
 21 also seeks attorney fees under this claim pursuant to California Code of Civil
 22 Procedure § 1021.5.

23 **SIXTH CLAIM FOR RELIEF**

24 **Negligence (Cal. Govt. Code § 820 and California Common Law)**

25 (By PLAINTIFF against all DEFENDANTS)

26 101. PLAINTIFF repeats and re-alleges each and every allegation of
 27 paragraphs 1 through 100, inclusive, as if fully set forth herein.
 28

1 102. Police officers, including DEFENDANTS, have a duty to use
2 reasonable care to prevent harm and injury to others. This duty includes using
3 appropriate tactics, giving appropriate commands, giving appropriate
4 warnings, and not using any force unless necessary, using the least amount of
5 force necessary, and only using deadly force as a last resort. These duties also
6 include providing proper training and equipment to officers so that they may
7 perform their duties in accordance with the department policies, properly
8 investigate use of force incidents, and punish, re-train, terminate, and/or
9 prosecute violators of those policies and the law.

10 103. The DEFENDANTS breached their duty of care. Upon
11 information and belief, the actions and inactions of DEFENDANTS were
12 negligent and reckless, including but not limited to:

13 (a) the failure to properly and adequately assess the need to use
14 force against PLAINTIFF;

15 (b) the negligent tactics and handling of the situation with
16 PLAINTIFF, including actions before the physical attack;

17 (c) the negligent scope and manner of the detention, arrest, and
18 use of force, against PLAINTIFF;

19 (d) the failure to properly train and supervise employees, both
20 professional and non-professional, including Defendants MAYNARD,
21 BISHOP, AGUILA, KLINZING, and DOES 1-6, inclusive;

22 (e) the failure to ensure that adequate numbers of employees
23 with appropriate education and training were available to meet the needs
24 and protect the rights of PLAINTIFF;

25 (f) the negligent handling of evidence, witnesses, and the
26 negligent investigation of the use of excessive force against
27 PLAINTIFF; and
28

1 (g) the failure to punish, re-train, terminate, and/or prosecute
2 violators of Department policies and the law.

3 104. As a direct and proximate result of DEFENDANTS' conduct as
4 alleged above, and other undiscovered negligent conduct, PLAINTIFF was
5 caused to suffer severe past and future mental and physical pain and suffering,
6 loss of enjoyment of life, medical expenses, and lost earning capacity.

7 105. At all relevant times, PLAINTIFF was not an immediate threat to
8 anyone, including DEFENDANTS.

9 106. The CITY is vicariously liable for the wrongful acts of
10 DEFENDANTS pursuant to section 815.2(a) of the California Government
11 Code, which provides that a public entity is liable for the injuries caused by
12 its employees within the scope of the employment if the employees' act would
13 subject him or her to liability.

14 107. PLAINTIFF seeks attorneys' fees under this claim pursuant to
15 California Code of Civil Procedure § 1021.5.

16
17 **SEVENTH CLAIM FOR RELIEF**

18 **(Violation of Cal. Civ. Code § 52.1 and California Common Law)**

19 **(By PLAINTIFF against all DEFENDANTS)**

20 108. PLAINTIFF repeats and re-alleges each and every allegation in
21 paragraphs 1 through 107 of this Complaint with the same force and effect as
22 if fully set forth herein.

23 109. The Bane Act, the California Constitution and California common
24 law prohibit the use of excessive force by law enforcement. California Civil
25 Code, Section 52.1(b) authorizes a private right of action and permits survival
26 actions for such claims. *See Bay Area Rapid Transit Dist. v. Superior Court*,
27 38 Cal.App.4th 141, 144 (1995). "[A] successful claim for excessive force
28

1 under the Fourth Amendment provides the basis for a successful claim under
 2 § 52.1.” *Chaudhry v. City of Los Angeles*, 751 F.3d 1096, 1105-06 (9th Cir.
 3 2014); citing *Cameron v. Craig*, 713 F.3d 1012, 1022 (9th Cir. 2013) (“[T]he
 4 elements of the excessive force claim under § 52.1 are the same as under §
 5 1983.”); *Bender v. Cnty. of L.A.*, 217 Cal.App.4th 968, 976 (2013) (“an
 6 unlawful [seizure]—when accompanied by unnecessary, deliberate and
 7 excessive force—is [] within the protection of the Bane Act”).

8 110. DEFENDANTS violated PLAINTIFF’S Fourth Amendment
 9 rights to be free from unreasonable seizures when they used excessive and
 10 unreasonable force against him. DEFENDANTS specifically intended to
 11 violate PLAINTIFF’S constitutional rights as stated above, as demonstrated
 12 by DEFENDANT’S reckless disregard for PLAINTIFF’S constitutional
 13 rights. Thus, PLAINTIFF can recover for violation of the Bane Act. *See*
 14 *Reese v. County of Sacramento*, 888 F.3d 1030, 1040-45 (2018).

15 111. On April 29, 2022, DEFENDANTS tackled PLAINTIFF face first
 16 into a wall, kned him in the face, shot him with a taser multiple times, struck
 17 him in the head with the taser as an improvised weapon, and subjected him to
 18 a group beating.

19 112. DEFENDANTS violated PLAINTIFF’S Constitutional right to be
 20 free from excessive and unreasonable force by police officers.
 21 DEFENDANTS intended to violate PLAINTIFF’S rights and/or acted with
 22 reckless disregard with regard to PLAINTIFF’S Constitutional rights, which
 23 is evidence that they intended to violate PLAINTIFF’S rights.

24 113. PLAINTIFF was caused to suffer severe pain and suffering. The
 25 conduct of DEFENDANTS was a substantial factor in causing the harm,
 26 losses, injuries, and damages of PLAINTIFF.

1 114. CITY is vicariously liable for the wrongful acts of
2 DEFENDANTS pursuant to section 815.2(a) of the California Government
3 Code, which provides that a public entity is liable for the injuries caused by
4 its employees within the scope of the employment if the employee's acts
5 would subject him or her to liability.

6 115. The conduct of the individual DEFENDANTS was malicious,
7 wanton, oppressive, and accomplished with a conscious disregard for the
8 rights of PLAINTIFF, entitling him to an award of exemplary and punitive
9 damages. PLAINTIFF also seeks costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, HENRY BARNHILL, requests entry of judgment in his favor against CITY OF HEMET, Defendants MAYNARD, BISHOP, AGUILA, KLINZING, GONZALEZ, TIPTON, and DOES 1-10, inclusive, as follows:

1. For compensatory damages, according to proof at trial, under federal and State law;
2. For punitive and exemplary damages against the individual defendants in an amount to be proven at trial;
3. For statutory damages;
4. For reasonable attorneys' fees including litigation expenses;
5. For costs of suit and interest incurred herein; and
6. For such other and further relief as the Court may deem just and proper.

Dated: March 28, 2023

LAW OFFICES OF GRECH & PACKER

/s/ Trenton C. Packer
Trent C. Packer, Esq.

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFF hereby submits this demand that this action be tried in front of a jury.

Dated: March 28, 2023

LAW OFFICES OF GRECH & PACKER

/s/ Trenton C. Packer

Trent C. Packer, Esq.

Attorneys for Plaintiff